

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION

STATE OF TEXAS, ET AL., §
Plaintiffs, §
v. § Case No. MO:23-CV-00047 DC
§
UNITED STATES DEPARTMENT OF §
THE INTERIOR, ET AL., §
Defendants. §

SCHEDULING ORDER

The scheduling recommendations provided by the parties on September 12, 2023 (Doc. 38) are adopted in part by the Court. Therefore, the following dates are entered to control the course of this case:

In lieu of a report on alternative dispute solution, the parties are ordered to mediate this case in compliance with Local Rule CV-88 on or before thirty (30) days prior to the date of the final pretrial conference. The parties must also ensure the provider files a notice of outcome in compliance with Local Rule CV-88(g) within five (5) days of the mediation.

1. The parties asserting claims for relief shall submit a written offer of settlement to opposing parties by 9/18/2023, and each opposing party shall respond, in writing, by 10/18/2023.
2. The parties shall file all motions to amend or supplement pleadings or to join additional parties by 1/12/2024.

3. ADMINISTRATIVE RECORD:

(A) By 11/3/2023, Defendants shall produce a provisional administrative record and transmit copies to each separately represented party. The parties shall meet and confer regarding administrative record issues by 12/4/2023.

(B) By 1/5/2024, Defendants shall transmit to each separately represented party and lodge with the Court (1) the entire Administrative Record for Docket No. FWS-R2-ES-2021-0015 and the Final Rule published at 85 Fed. Reg. 72,674 et seq. (Nov. 25, 2022); and (2) an affidavit authenticating the Administrative Record, detailing the process and procedure by which the Administrative Record was collected, and certifying its completeness.

(C) By 2/9/2024, Plaintiffs shall file any objections or requests to supplement/amend the Administrative Record.¹ If Plaintiffs believe discovery is needed to supplement or amend the Administrative Record, they shall file a motion for leave to do so by this date with a copy of the specific discovery sought. Defendants' position is that because this case involves undisputed facts set forth in the Administrative Record underlying the final agency action at issue, discovery is neither necessary nor warranted. See Van Loon v. Dep't of Treasury, No. 1:23-cv-312-RP, 2023 WL 5313091, at *6 (W.D. Tex. Aug. 17, 2023) ("In APA cases, '[e]vidence cannot be submitted in the reviewing court and the parties are bound by the evidence in the administrative record.'" (quoting Redmond v. United States, 507 F.2d 1007, 1011 (5th Cir. 1975))).

(D) By March 8, 2024, Defendants shall respond to any of the following filed by Plaintiffs, if any: motion for leave to seek discovery, objections or requests to supplement/amend the Administrative Record. Defendants may supplement or amend the Administrative Record in response to any motion for leave to conduct discovery, objection or request to supplement/amend the Administrative Record.

(E) By 3/22/2024, Plaintiffs shall notify the Court whether any pending motion for leave to conduct discovery and/or objections to or requests to supplement/amend the Administrative Record remain, if any, after the Administrative Record has been supplemented or amended. The parties agree that no additional motions for leave to conduct discovery and/or objections to or requests to supplement/amend the Administrative Record will be filed on this date.

4. Motions for summary judgment shall be filed by 4/26/2024. Such brief shall be limited to 35 pages. Responses to motions for summary judgment shall be filed by 5/31/2024. Such brief shall be limited to 35 pages. Reply briefs supporting a party's motion for summary judgment shall be filed by 6/14/2024. Such brief shall be limited to 15 pages.

7. The Final Pretrial Conference for this case is set for 9/12/2024 at 1:30 P.M. The parties shall file their pretrial submissions in accordance with the provisions set out in Local Rule CV-16(e). Pretrial submissions shall also be provided in a USB Flash Drive.

8. This case is set for jury selection/trial on 10/7/2024 at 8:00 A.M.

It is so ORDERED.

SIGNED this 13th day of September, 2023.



DAVID COUNTS

¹ 1 Any disputes regarding the sufficiency, scope, or content of the Administrative Record or the supplementation of same not raised during consultation of the parties and/or by motion on or before the February 9, 2024, deadline will be deemed to have been waived.

UNITED STATES DISTRICT JUDGE